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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,378	09/21/2005	Ethan Vickery	VICE:005US	3385
33425 7590 11/12/2009 FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVE. SUITE 2400 AUSTIN, TX 78701				
EXAMINER				
ARK, DARREN W				
ART UNIT		PAPER NUMBER		
3643				
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11/12/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/550,378

**Applicant(s)**

VICKERY, ETHAN

**Examiner**

Darren W. Ark

**Art Unit**

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. In regard to applicant's assertion that "Claim 11 covers elected Species IV, but is not limited to covering only Species IV...A claim need not read on ever species disclosed in an application to be generic...'"...may include two or more of the disclosed embodiments within the breadth and scope of definition (and thus be designated a generic or genus claim).'"..., the Examiner contends that although Claim 11 may read on more than a single embodiment disclosed in the application, it may not read on other embodiments due to its specific recitation of the structure of "...a closed bottom in which one or more openings are positioned...the receptacle having one or more protrusions...to extend through the one or more openings in the bottom of the base..." which would not be generic to say the embodiment of Species I wherein the enclosure 1000 is integrally molded with the receptacle 1200 or Species V wherein a tongue and groove mechanism is used to secure the enclosure to the receptacle.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 11, 12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Jalbert 3,708,905.

Jalbert discloses providing a plastic bait station (see col. 1, lines 32-35) comprising a lid (70), a sidewall (12) with a doorway (48, 50, 52), and a base (4, 6, 8, 10, 12, 14) having a closed bottom (4, 18, 32, 34, 36 are closed in that they prevent the escape of lobsters from within the trap) in which openings (see Fig. 7) are positioned; providing a receptacle (100) having protrusions (118) configured to extend through the openings (see Fig. 7) in the bottom of the plastic bait station; placing pre-formed weighted material (rocks or other suitable material) in the receptacle; placing bait (see col. 4, lines 13-15) in the plastic bait station; securing the plastic bait station to the receptacle (see Fig. 7), the securing including causing the protrusions of the receptacle to extend through the openings in the bottom of the plastic bait station.

In regard to claim 12, Jalbert discloses the lid (70) being integrally hinged (via 76) to the base (4, 6, 8, 10, 12, 14).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 11, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pruitt 5,897,018 in view of Loebbert 5,150,810.

Pruitt discloses providing a bait station comprising a lid (lid of 32), a sidewall (sidewall of 32) with a doorway (handles on 32 define openings which can comprise doorways; the doorway has not been particularly claimed in a manner which recites that it extends into the interior of the bait station or communicates with the interior volume of the bait station where the bait is placed), and a base (bottom of 32), the base having a closed bottom (garbage can 32 has a closed bottom so as to retain the trash therein; also see col. 4, lines 55-56 wherein it states "...garbage can 32 having a closed circular bottom face") on which projections (34) are positioned; providing a receptacle (12) configured to hold weighted material, the receptacle having openings (each of 20 provided with lateral groove) positioned therein, the projections of the base bottom configured to extend through the openings in the receptacle; placing pre-formed weighted material (water which is formed by nature) in the receptacle; placing bait (garbage) in the bait station; and securing the bait station to the receptacle (via 14), the securing including causing the protrusions of the base bottom to extend through the openings in the receptacle, but does not disclose a plastic bait station. Loebbert

discloses a plastic bait station comprising a lid (3 of polyethylene) and a base (1 of polyethylene, 2 of polyethylene), wherein the lid (3) is integrally hinged (via 18) to the base (2). It would have been obvious to one of ordinary skill in the art to make the device of Pruitt out of plastic in view of Loebbert in order to provide a material for the bait station which can be molded in many different colors, sizes and configurations and also to provide an integrally connected lid and base so that the lid is not easily disassociated from the base.

Pruitt and Loebbert disclose the securing including causing the protrusions of the base bottom to extend through the openings in the receptacle, but do not disclose the base having a bottom with openings or the receptacle with protrusions. It would have been an obvious matter of design choice to make the base bottom with the openings and the receptacle with the protrusions, since such a modification would have involved a mere reversal of parts. A reversal of parts is generally recognized as being within the level of ordinary skill in the art. *In re Gazda*, 219 F.2d 449, 104 USPQ 400 (CCPA 1955).

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pruitt 5,897,018 in view of Griswold et al. 6,508,377.

Pruitt discloses providing a bait station comprising a lid, a sidewall with a doorway (handle of 32 defines opening akin to a doorway) and a base (32), the base having a bottom on which projections (34) are positioned; providing a receptacle (12) configured to hold weighted material, the receptacle having openings (each of 20 provided with lateral groove) positioned therein, the projections of the base bottom

configured to extend through the openings in the receptacle; placing pre-formed weighted material (water which is formed by nature) in the receptacle; placing bait (garbage) in the bait station; and securing the bait station to the receptacle (via 14), the securing including causing the protrusions of the base bottom to extend through the openings in the receptacle, but does not disclose a plastic bait station. Griswold et al. discloses a plastic bait station (see Fig. 4 wherein lid 23, base 11 and receptacle 16 are all shown as being made of plastic). It would have been obvious to one of ordinary skill in the art to make the device of Pruitt out of plastic in view of Griswold et al. in order to provide a material for the bait station which can be molded in many different colors, sizes and configurations.

7. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pruitt 5,897,018 in view of Griswold et al. 6,508,377 as applied to claim 11 above, and further in view of Loebbert 5,150,810.

Pruitt and Griswold et al. do not disclose the lid being integrally hinged to the base. Loebbert discloses the lid (3) being integrally hinged (via 18) to the base (2). It would have been obvious to one of ordinary skill in the art to modify the device of Pruitt and Griswold et al. such that the lid is integrally hinged to the base in view of Loebbert in order to provide a material which can be molded in many different colors, sizes and configurations.

8. Claims 11, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crossen 6,513,283 in view of Pruitt 5,897,018 or Morell et al. 3,343,744.

Crossen discloses a method of securing a bait station (128) comprising providing a plastic bait station having a closed bottom in which an opening (126) is positioned; providing a receptacle (120) having a protrusion (1/4 inch bolt) to extend through the opening; placing weighted material in the receptacle (123; 123 is formulated to be harder/more dense than periphery of 120) in the receptacle (120); securing the plastic bait station to the receptacle, the securing including causing the protrusions of the receptacle to extend through the opening in the bottom of the plastic bait station, but does not disclose the plastic bait station having a bottom with openings or a receptacle having protrusions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the bait station such that it has a plurality of openings and the receptacle such that it has a plurality of protrusions, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art, and because the utilization of a plurality of openings and protrusions would allow the connection between the bait station and receptacle to be stronger and more evenly held together at a plurality of locations. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8 and *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Crossen discloses forming the receptacle concurrently with the weighted material, but does not disclose placing pre-formed weighted material in the receptacle. Pruitt generally discloses a device comprising a lid and a base (32), the base having a bottom on which projections (34) are positioned; providing a receptacle (12) configured to hold weighted material, the receptacle having openings (each of 20 provided with



lateral groove) positioned therein, the projections of the base bottom configured to extend through the openings in the receptacle; placing pre-formed weighted material (water which is formed by nature) in the receptacle; placing bait (garbage) in the bait station; and securing the bait station to the receptacle (via 14). Morell et al. discloses a box construction is of a type suitable for use as a bait box adapted to catch rodents or other similar animals and that prior boxes required bricks, stones, or other weight object to placed thereupon in order to prevent the box from being dragged away by the animal being sought or moved by a strong wind. Morell et al. discloses the box (10) comprising a lid (23), a base (generally 12, 14, 30, 31), and a receptacle (A) for receiving a preformed weighted material (compartment A adapted to be filled with sand, gravel, or the like to provide the necessary weight to prevent the set-up box from being moved either by wind or by an animal seeking the bait which is normally placed within central compartment B). It would have been obvious to one of ordinary skill in the art to modify the method of Crossen such that pre-formed weighted material is placed in the receptacle in view of Pruitt or Morrell et al. in order to provide the user with the ability to fill the receptacle at the time of use with the desired type of material having the density property necessary to weight the bait station and keep it in place.

9. Claims 11, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crossen 6,513,283 in view of Faucillon 4,486,973.

Crossen does not disclose the plastic bait station having a bottom with openings or a receptacle having protrusions or placing preformed weighted material in the receptacle. Faucillon discloses a bait station having a lid (15), a base (2) having a

bottom with openings (26), and a receptacle (1) with protrusions (28, 27) configured to extend through the openings in the bottom of the base, and wherein a pre-formed weighted material (concrete blocks 19) is placed in the receptacle. It would have been obvious to a person of ordinary skill in the art to modify the method of Crossen such that the base and receptacle have openings and protrusions and that a pre-formed weighted material is placed in the receptacle in view of Faucillion in order to provide a plurality of attachment points for the bait station and receptacle to more evenly hold the separate bait station and receptacle together and also to allow the user to add as much weight as necessary before deployment of the bait station.

### ***Response to Arguments***

10. Applicant's arguments filed 08/26/2009 have been fully considered but they are not persuasive.

The Examiner agrees with applicant's arguments concerning Griswold.

In regard to applicant's argument that "Jalbert...does not have a closed bottom with one or more openings...", the Examiner contends that the bottom (4) of the lobster trap is closed in that it is intended to prevent the escape of lobsters therefrom. Applicant has failed to more particularly claim the "closed bottom" of the desired invention in a manner which clearly distinguishes over the Jalbert patent.

In regard to applicant's argument that "Neither Pruitt nor Loebbert...suggests a sidewall with a doorway...", the Examiner contends that the doorway of the desired invention has not been particularly claimed in a manner which clearly defines over the

handles of the garbage can (32) of Pruitt which are clearly shown in Fig. 1 or 5 of the Pruitt patent as defining openings through which a hand is inserted for grasping the can and thus can also be broadly defined as a doorway as claimed. Applicant has failed to particularly recite the structure of the doorway such that it extends through the sidewall and communicates with an interior volume of the bait station.

In regard to applicant's argument that "the Office's contention that it would be obvious to put one or more openings in the bottom of a garbage can is unsupported by the 'rational underpinning' that *KSR* requires: garbage would leak out...", the Examiner contends that the means for securing the bait station base to the receptacle of Pruitt does not require penetration of either the base of the bait station or the receptacle and thus there would be no chance that any garbage would leak out of the station of Pruitt in the configuration of the proposed modification by the Examiner that it would have been obvious to modify the base such that it has the openings and modify the receptacle since it has the protrusions. The Examiner set forth in the obviousness rejection that the system of Pruitt and Loebbert have the projections and openings but are merely in reverse order in comparison to the desired invention where the openings are in the base bottom and the protrusions are on the receptacle. The Examiner was merely stating in the rejection that it would have been an obvious design change in terms of reversal of parts and not a totally whole incorporation of openings and protrusions on the system of Pruitt and Loebbert which were not originally present. Pruitt disclosed the basic structure of openings and protrusions for securing the base bottom to the receptacle

albeit with the openings and protrusions being in reverse orientation with respect to the claimed desired invention.

With regard to applicant's assertion of "The internal consistency...the Office contends that Crossen discloses 'placing pre-formed weighted material in the receptacle...Then, on page 8 of the Action, the Office concedes that Crossen 'does not disclose placing pre-formed weighted material in the receptacle'...", the Examiner would like to apologize for the typographical error in the Office Action at page 7 wherein the reference to Crossen as having any preformed weighted material placed therein should have been removed. The Examiner contends that it was clear from the statement at page 8 that the Examiner's intention was to modify Crossen with the Pruitt or Morrell patents for Crossen's deficiency in teaching a "pre-formed weighted material in the receptacle". It is clear from the Examiner's rejection that the intention was to utilize the pre-formed weighted material as taught by Pruitt or Morrell as means for weighing the bait station of Crossen which discloses the weighted material formed simultaneously and integrally with the Crossen receptacle.

In regard to applicant's argument that "...the 'receptacle' is the one in Crossen...ring of weight 120...its rejection fails...a ring is not a receptacle because it has no bottom to support anything placed in it...", the Examiner contends that the Crossen receptacle (120) completely surrounds and circumscribes the weight (123) therein and it is unclear to the Examiner how applicant came to the conclusion that the outer portion (120) of Crossen came to be categorized as an outer ring. The Examiner asserts that

this outer portion is a receptacle in that it contains or holds the weighted material therein.

In regard to applicant's argument that "...eliminating the heavier, denser section 123 of weight 120 is not obvious because it would change the principle of operation of Crossen's invention...", the Examiner contends that the modifying references of Pruitt and Morrell were intended to show that it is possible to substitute the receptacle for adjustably receiving pre-formed weighted material therein for the non-adjustable, integrally formed receptacle and weight combination of Crossen for the purpose of allowing the user to place the desired amount of weight inside the receptacle versus the single unit weighted amount as taught by the device of Crossen.

In regard to applicant's argument that "If the Office is contending that the 'receptacle' is Pruitt's base 12, its rejection also fails for several reasons..." the Examiner contends that the Pruitt device was only relied upon for its disclosure of a receptacle capable of receiving pre-formed weighted material therein and not for its particular configuration of openings and projections which are already disclosed by Crossen.

In regard to applicant's argument that "Morrell fails to disclose or suggest a bait station that is separate from but securable to a receptacle...", the Examiner contends that the Morrell patent was relied upon for its capability of allowing the user to fill a receptacle with pre-formed weighted material as an improvement over the single piece weight and receptacle combination taught by Crossen and that by allowing the user to adjust the contents of the receptacle in the device of Morrell will provide the user with

some measure of adjustability in terms of how much weight and how dense a material may be loaded into the receptacle.

In regard to applicant's argument that "Faucillion does not disclose a bait station with a closed bottom...", the Examiner contends that the bottom of the trap (1) of Faucillion is shown to be closed in Fig. 5 since the bottom opening (8) is where the bait is to be placed and that only the top opening (7) is intended for the entry of shellfish into the trap. Regardless, the Faucillion patent was not relied upon for its disclosure of how its bottom is configured. Instead, Faucillion was relied upon for its disclosure of a receptacle utilizing a pre-formed weighted material which is placed within a receptacle for weighing down the entire system as desired or necessary and for its disclosure of the structure for joining the base of a bait station (trap) to a receptacle with the weighted material. Crossen already discloses the closed bottom of the base.

In regard to applicant's argument that "wet concrete...is not pre-formed weighted material (it is unformed)...", the Examiner contends that the wet concrete is formed in that it is a mixture of materials to achieve the composition of concrete. It is the Examiner's assertion that wet concrete is a composition which has not hardened but which has been formed by the user after mixing the necessary components.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Harris 5,549,214 discloses closure devices comprising a base (1) and a lid (2), wherein the lid (2) has a closure device provided by a flap (10) formed from a first portion (11) which is flexibly connected to the lid (2) by an integral strip (12 which acts like a hinge) of the plastics moulding from which the lid is formed. Cuccharia 5,503,292 discloses a plastic device comprising a base (12) with a bottom having openings (defined between 31, 33 & 16) and a receptacle (14) with projections (39, 41).

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (571) 272-6885. The examiner can normally be reached on M-F, 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darren W. Ark/  
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